

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. CR 17-0387 CRB
	)	
AMER SINAN ALHAGGAGI,	)	
	)	San Francisco, California
Defendant.	)	Wednesday
	)	August 30, 2017
	)	1:30 p.m.

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**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

**For Plaintiff:** BRIAN STRETCH  
United States Attorney  
450 Golden Gate Avenue  
San Francisco, California 94102  
**BY: S. WAQAR HASIB**  
**ASSISTANT UNITED STATES ATTORNEY**

**For Defendant:** SWANSON & McNAMARA  
300 Montgomery Street  
Suite 1100  
San Francisco, California 94104  
**BY: MARY McNAMARA, ESQ.**  
**AUGUST GUGELMANN, ESQ.**

**Reported By: Debra L. Pas, CSR 11916, CRR, RMR, RPR**  
*Official Reporter - US District Court*  
*Computerized Transcription By Eclipse*

*Debra L. Pas, CSR, RPR, RMR, CRR*  
*Official Reporter - U.S. District Court - San Francisco*  
*(415) 431-1477*

Wednesday - August 30, 2017

1:35 p.m.

P R O C E E D I N G S

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(Defendant present, in custody.)

**THE CLERK:** Calling Criminal Action CR 17-0387, USA  
versus Amer Sinan Alhaggagi.

**MR. HASIB:** Good afternoon, your Honor. Waqar Hasib  
for the United States.

**MS. McNAMARA:** Good afternoon, your Honor. Mary  
McNamara and August Gugelmann on behalf of Mr. Alhaggagi, who  
is before the Court in custody.

**THE COURT:** What's up?

**MR. HASIB:** Well, your Honor, this is the initial  
appearance before this Court. We have appeared before the  
magistrate on an arraignment.

Counsel and I met-and-conferred today and discussed some  
matters that we thought would be good to bring to the Court's  
attention now, this being the initial status conference. Those  
issues -- and I'll hit them in order.

Number one, we would like to give the Court a sense of  
where we are at with respect to discovery.

Number two, I would like to at least bring to the Court's  
attention some issues relating to classified information that  
may come up in this case.

Number three, I'd like to discuss the speedy trial

1 implications at this point.

2 And number four, there is a protective order in this case.  
3 We would just like to address a couple of issues relating to  
4 that.

5 **THE COURT:** Before we go there, the case is  
6 originally assigned to Judge Tigar?

7 **MR. HASIB:** It was originally assigned to Judge  
8 Tigar, your Honor. This case was originally charged as a  
9 complaint in Oakland. It was charged as an identity theft case  
10 in Oakland, and the Defendant was arrested and brought into  
11 court in November of last year, appeared before Judge Westmore  
12 and Judge Ryu. It remained as a complaint until we indicted  
13 the case a few weeks ago here in San Francisco.

14 When we indicted it, we charged it as a San Francisco  
15 case. However, and I will readily admit, it was the  
16 Government's error on the cover sheet. We left the Oakland  
17 courthouse marked. So when the indictment came down, it was  
18 referred by the Clerk to the Oakland courthouse, but we moved  
19 to transfer venue here.

20 **THE COURT:** All right.

21 **MR. HASIB:** So let me hit those four issues that I  
22 discussed. And, of course, if there are any other issues that  
23 the Court wants to -- wants the parties to address, I would be  
24 happy to address those.

25 Let me just say at the outset, the Government has enjoyed

1 a very collaborative and cooperative relationship with defense  
2 counsel so far and I have every hope that will continue.

3 Number one, discovery, as I mentioned this case was  
4 originally charged back in November as an identity theft case.  
5 We actually turned over significant discovery relating to the  
6 current pending charges relating to terrorism while just the  
7 identity theft case was pending. We turned over, for instance,  
8 all recordings that the Defendant made to an undercover agent  
9 relating to possible terrorism-related offenses. We have not  
10 turned over transcripts related to those recordings as yet, but  
11 I expect we will be able to do that in short order.

12 We've also turned over electronic communications that the  
13 Defendant had online with a confidential source relating to,  
14 again, terrorism-related matters. I expect to turn over  
15 additional online communications that the Defendant had very  
16 shortly.

17 We also turned over the digital downloads of two cell  
18 phones that the -- that we believe belong to the Defendant.  
19 Those cell phones contained many, many, many, many pages of  
20 chat room conversations that we expect will be relevant to the  
21 material support charge in the indictment.

22 Many of those conversations occurred in Arabic. I've  
23 turned over some verbatim translations that have been done by  
24 the FBI of those chat room conversations. There are a lot more  
25 that still have to be translated. I can report to the Court

1 that I've -- I'm arranging for those to be outsourced to a  
2 contract linguist. It will take approximately two to three  
3 months to have the remaining chat room conversations in Arabic  
4 translated.

5 I also have not yet turned over, but I'm prepared to do  
6 so, I'm prepared to turn over Grand Jury materials, if this  
7 Court will authorize me to do so, pursuant to Rule 6(e). I can  
8 either submit a written motion or I can simply move here orally  
9 for the Court to authorize me to produce that. It will be  
10 subpoena returns and things of that nature.

11 And then finally, I have many 302s, some of which have  
12 been declassified and I've already turned over. Additional  
13 ones I expect to turn over in short order, which I mentioned  
14 that they were declassified.

15 Which brings me to my second point, which is that this  
16 case will very likely involve issues relating to classified  
17 information.

18 So I expect to invoke Title 18, Appendix 3 -- that's the  
19 Classified Information Procedures Act -- at some point in this  
20 case. Today I'm going to ask the Court to set a CIPA status  
21 conference, which is one of the things that CIPA allows for.  
22 It allows any party to set a pretrial -- or ask for a pretrial  
23 conference to essentially discuss CIPA matters that may arise.

24 Now, I know your Honor is familiar with CIPA because I've  
25 actually engaged with the Court before on CIPA-related issues.

1 So at any rate, I would like to ask for a CIPA status  
2 conference approximately six weeks out from today. I'm advised  
3 that October 17th at 1:30 is available for the Court. That's  
4 convenient for the parties. So if that works for the Court, I  
5 would like the Court to schedule that status conference.

6 **THE COURT:** So scheduled.

7 **MR. HASIB:** The third issue I said I would mention  
8 would be issues relating to the speedy trial, Speedy Trial Act.  
9 Because I expect to invoke CIPA in this case and because I  
10 expect there may be some CIPA litigation involved, that process  
11 can take some time.

12 As the Court may or may not be aware things have to be  
13 coordinated with many, many Government agencies in Washington  
14 to make sure that everyone is on board with whatever we end up  
15 filing. That can take some time.

16 So I'm going to ask the Court to designate this case as  
17 complex for purposes of the Speedy Trial Act, at least for the  
18 time being. Once the CIPA issues are resolved, I think at that  
19 point we can revisit whether it's necessary to have it  
20 designated as complex, but while the CIPA issue is still  
21 hanging out there, I think it makes sense. And I would be  
22 happy to file a written motion to this effect, but I believe  
23 there is --

24 **THE COURT:** No objection?

25 **MS. McNAMARA:** No objection, your Honor.

1           **THE COURT:** Okay. It's so designated.

2           **MR. HASIB:** Related to the speedy trial, and this may  
3 seem somewhat incongruous of me to bring it up, but I'd like to  
4 ask the Court to set a trial date. And the reason that I'd  
5 like to do that is in part because I'm invoking CIPA. And the  
6 potential danger here is that CIPA litigation can conceivably  
7 go on for a long time. I'm experiencing this right now in  
8 another case before Judge Orrick in the *United States versus*  
9 *Adam Shafi* case.

10           I believe that if there is a trial date set, even if it's  
11 sometime in the future, frankly my interest here is being able  
12 to go to the Government agencies that I have to coordinate with  
13 for discovery issues and say look: The Court has set a trial  
14 date. I need X, Y, Z done six months before that date.

15           So what I've discussed with counsel and what I've  
16 discussed with the Clerk of the Court briefly is setting a  
17 trial date for October 1st of 2018, which I think gives us  
18 plenty of time to resolve the CIPA issues. Once the CIPA  
19 issues are resolved, we can do that.

20           **MS. McNAMARA:** Thank you, your Honor.

21           **MR. HASIB:** Then last, but not least, there is a  
22 protective order governing discovery disclosures in this case.  
23 I'll actually defer to counsel if she wants to address any  
24 particular matters relating to that. But essentially we are  
25 negotiating perhaps amending that, and I bring that to the

1 Court's attention with the additional terms.

2 **THE COURT:** Returning for a moment total 6(e), just  
3 give me an order and I'll sign it. We should memorialize it in  
4 a written order.

5 **MR. HASIB:** We will do so, your Honor.

6 **THE COURT:** Any issues on the protective order?

7 **MS. McNAMARA:** No -- well, there are, but I think we  
8 won't take the Court's time with them. We will work those out  
9 bilaterally and come back to the Court only as necessary.

10 May I just make one comment to the case? I want to echo  
11 AUSA Hasib's comment about our good relationship. We've tried  
12 very hard here to work out whatever disputes we have before we  
13 came to the Court. And in the spirit of that, we are open to  
14 setting the October trial date with a caveat that we haven't  
15 gotten all the discovery yet, but we'll make of effort to meet  
16 it.

17 We do think this is a case that is will be contested to  
18 trial, your Honor. The material support charge is, if not  
19 unique, it's very unusual. It's charged as an attempt. And it  
20 relies on the alleged opening by Mr. Alhaggagi of a handful of  
21 social media accounts. That's it. That's the basis of the  
22 material support.

23 There are other allegations regarding Mr. Alhaggagi's  
24 conduct that have gotten significant press attention, but they  
25 are not charged as material support, not chargeable as material



1 support.

2 So it is a very unusual case, and I think it will  
3 implicate issues of law and I think it will be an interesting  
4 case to try.

5 **MR. HASIB:** Certainly don't dispute that, your Honor.

6 **THE COURT:** Thank you.

7 **MS. McNAMARA:** Thank you, your Honor.

8 **MR. HASIB:** Thank you, your Honor.

9 (Proceedings adjourned.)  
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CERTIFICATE OF OFFICIAL REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

*Debra L. Pas*

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Debra L. Pas, CSR 11916, CRR, RMR, RPR

Monday, June 4, 2018